

STATE OF MICHIGAN
COURT OF APPEALS

In re FRANZ, Minor.

UNPUBLISHED

April 23, 2015

No. 323540

Macomb Circuit Court

Family Division

LC No. 2012-000403-NA

Before: TALBOT, C.J., and MURPHY and GLEICHER, JJ.

PER CURIAM.

The circuit court terminated the respondent-mother's parental rights to her young son based on her failure to participate in and adequately benefit from services directed at resolving her issues of substance abuse, domestic violence, neglecting her children, and maintaining suitable housing. The record evidence supports the circuit court's determinations that at least one statutory ground supported the termination and that termination was in the child's best interests. We therefore affirm.

I. BACKGROUND

Respondent has a long history with Child Protective Services (CPS) and the Department of Human Services (DHS). In 2007, the DHS took respondent's oldest two children into care and provided services. In 2008, respondent voluntarily released her rights over those children and allowed her aunt to adopt them. Respondent gave birth to her third child shortly thereafter and the DHS took that child into care when she was only two months old. Respondent regained custody of that child in 2011, one month before giving birth to ZF, the subject child in this appeal.

When ZF was approximately 1-1/2 years old, the DHS again became involved in respondent's family life. Respondent and her husband were both on probation for possessing controlled substance analogues. Respondent had opiates in her system and produced a prescription. However, that prescription was proven invalid. Respondent and her husband had also allowed a pedophile to spend time in their home. Despite respondent's claim that her husband had sufficient income to provide for the family, they were about to be evicted from their rented abode. Respondent pleaded to jurisdiction and the older child remaining in her care was placed with the child's father. The court later released jurisdiction over that child.

Respondent and her husband then proceeded together to plan for reunification with ZF. They initially complied with services, including undergoing psychological evaluations,

participating in counseling, and submitting to random drug screens. They regularly visited ZF, who had been placed with the paternal grandparents. In November 2013, the couple earned the return of ZF to their care. Within two weeks, however, an incident of domestic violence occurred in the home while ZF was being held by his father. The child's father was arrested and respondent immediately began a romantic relationship with a new man. She thereafter exhibited an inability to properly supervise the child. CPS removed ZF on an emergency basis.

After ZF's second removal, respondent failed to adequately participate in services. She missed nearly every random drug screening. She tested positive for marijuana in January 2014, and medications for which she provided no prescription in May 2014. Respondent refused to participate in another parenting class. Respondent was discharged from counseling for failure to attend and had to restart services. She thereafter cancelled and put off several sessions. Moreover, respondent had been evicted again and was living with her boyfriend and his parents. Respondent's only plan for permanent housing revolved around her boyfriend. However, despite a seven-month time span in which to comply, respondent's boyfriend never began services to ensure he could safely care for the child. Respondent even stopped visiting her child on a regular basis, missing every parenting time session in the month of February and several others before the termination hearing.

After hearing evidence in July 2014, the circuit court terminated respondent's parental rights to ZF. Respondent now appeals that decision.

II. STANDARDS OF REVIEW

Pursuant to MCL 712A.19b(3), a circuit court "may terminate a parent's parental rights to a child if the court finds, by clear and convincing evidence" that at least one statutory ground has been proven. The petitioner bears the burden of proving that ground. MCR 3.977(A)(3); *In re Trejo*, 462 Mich 341, 350; 612 NW2d 407 (2000). We review a circuit court's factual finding that a statutory termination ground has been established for clear error. *In re Rood*, 483 Mich 73, 90-91; 763 NW2d 587 (2009). "A finding of fact is clearly erroneous if the reviewing court has a definite and firm conviction that a mistake has been committed, giving due regard to the trial court's special opportunity to observe the witnesses." *In re Moss*, 301 Mich App 76, 80; 836 NW2d 182 (2013) (quotation marks and citation omitted). "Clear error signifies a decision that strikes us as more than just maybe or probably wrong." *In re Williams*, 286 Mich App 253, 271; 779 NW2d 286 (2009).

The circuit court terminated respondent's parental rights based on a supplemental petition. Generally, when termination is based on "grounds new or different from those that led the court to assert jurisdiction over the children, the grounds for termination must be established by legally admissible evidence." *In re Jenks*, 281 Mich App 514, 516; 760 NW2d 297 (2008), citing MCR 3.977(F)(1)(b). The supplemental petition in this case merely added a request for termination; it did not include additional or new grounds in support. Accordingly, the DHS was not required to support its request with legally admissible evidence.

"Once a statutory ground for termination has been proven, the trial court must find that termination is in the child's best interests before it can terminate parental rights." *In re Olive/Metts*, 297 Mich App 35, 40; 823 NW2d 144 (2012), citing MCL 712A.19b(5).

“[W]hether termination of parental rights is in the best interests of the child must be proven by a preponderance of the evidence.” *Moss*, 301 Mich App at 90. The lower court should weigh all the evidence available to it in determining the child’s best interests. *Trejo*, 462 Mich at 356-357. Relevant factors in this consideration include “the child’s bond to the parent, the parent’s parenting ability, the child’s need for permanency, stability, and finality, and the advantages of a foster home over the parent’s home.” *Olive/Metts*, 297 Mich App at 41-42 (citations omitted).

III. ANALYSIS

The circuit court terminated respondent’s parental rights under three sections of MCL 712A.19b(3), which provides, in relevant part:

The court may terminate a parent’s parental rights to a child if the court finds, by clear and convincing evidence, 1 or more of the following:

(c) The parent was a respondent in a proceeding brought under this chapter, 182 or more days have elapsed since the issuance of an initial dispositional order, and the court, by clear and convincing evidence, finds either of the following:

(i) The conditions that led to the adjudication continue to exist and there is no reasonable likelihood that the conditions will be rectified within a reasonable time considering the child’s age.

* * *

(g) The parent, without regard to intent, fails to provide proper care or custody for the child and there is no reasonable expectation that the parent will be able to provide proper care and custody within a reasonable time considering the child’s age.

* * *

(j) There is a reasonable likelihood, based on the conduct or capacity of the child’s parent, that the child will be harmed if he or she is returned to the home of the parent.

Clear and convincing legally admissible evidence supported termination on all of these grounds.

(c)(i)

The DHS cited several grounds for removing ZF from respondent’s care in 2012, and respondent pleaded to jurisdiction. First, respondent and her husband had allowed a person who had previously molested a child stay in their home. Second, the parents were both on probation for possession of analogues. Finally, neither had stable employment and they were on the verge of eviction from their rented home.

On July 31, 2014, the second day of the termination hearing, respondent admitted that she still did not have stable housing. She was living with her boyfriend and his parents in the

parents' rented home. All four were scheduled to be evicted within the month. Respondent and her boyfriend desired to purchase a \$2,000 mobile home, which required a \$381 monthly lot rent. The couple made a \$150 deposit and had to pay the remainder within 30 days. Neither made enough at their jobs to make this plan workable. Respondent was then working as a waitress. However, in the seven months leading up to the hearing, she had held three jobs, with no term of employment lasting for long. Although respondent claimed that she never had a drug problem, she tested positive for marijuana in January 2014 and benzodiazepines in May, and had missed so many random drug tests that no one could be sure of her drug use status. Accordingly, the evidence establishes that the conditions that led to adjudication continued to exist at the time of the termination hearing.

The DHS also established that there was no reasonable likelihood that respondent could rectify these conditions within a reasonable time. Respondent has been receiving services on-and-off since the 2007 removal of her oldest two children. Respondent's inability to benefit from services for the past 8 years is evidence that she will not soon rectify conditions to secure the child's safe return. A parent may not simply participate in services, but must also benefit and show improvement to earn the return of her child. *In re Gazella*, 264 Mich App 668, 676; 692 NW2d 708 (2005), superseded in part on other grounds as stated in *In re Hansen*, 285 Mich App 158, 163; 774 NW2d 698 (2009), vacated on other grounds 486 Mich 1037 (2010). And parents in child protective proceedings have a duty to appear and participate in offered services. *In re Frey*, 297 Mich App 242, 247-248; 824 NW2d 569 (2012). Here, respondent mostly failed to appear for services and showed little to no benefit. Accordingly, termination was supported under (c)(i).

(g)

Respondent has not provided ZF proper care and custody either before or during these proceedings. Before ZF's 2012 removal, respondent failed to adequately protect him from potential harm. Respondent allowed the brother of her first ex-husband to stay in her home. That individual was a registered pedophile who molested his young nephew. Also before the child's removal, the parents misused prescription painkillers and abused alcohol around the child.

During the first part of these child protective proceedings, respondent and her husband worked together to be reunited with their child. They improved the conditions leading to adjudication sufficiently to regain custody. Within two weeks, the child's father had to be removed from the home because of domestic violence. Even if that incident were solely the father's fault, respondent exhibited a failure to provide proper care and custody in his absence. On one occasion, the paternal grandmother discovered then two-year-old ZF unsupervised while respondent and friends slept. On another, a service provider found ZF wandering unsupervised through the living areas of the home. The record implication is that respondent and her boyfriend shut the bedroom to engage in intercourse while the child was awake. Finally, respondent left ZF with her first ex-husband and disappeared for three days.

Respondent thereafter did not willingly participate in additional services to secure the permanent return of her child. Respondent attended few drug screens, blaming her absences on transportation issues, work, and her need to participate in other services. These excuses were

illogical, however, as respondent barely participated in other services and worked a late shift. Respondent was discharged from therapy for nonattendance and had to restart her program. In the month leading up to her July 31 testimony at the termination hearing, respondent decided to cancel three weeks worth of counseling sessions. During this time, respondent increased the intensity of her relationship with her new boyfriend, the same boyfriend for which she had neglected her child. The caseworker advised respondent that the boyfriend had to overcome certain hurdles to be considered a safe coparent for ZF. The first hurdle was to submit to a psychological evaluation. The evaluation was scheduled twice and the boyfriend cancelled both times because of work conflicts. Despite having seven months to complete the task, the boyfriend never found time for the evaluation. As a result, respondent's boyfriend could not begin other services, such as random drug tests and counseling. Respondent's lack of cooperation is evidence that she still would have been unable to provide proper care and custody by the time of the termination hearing.

For the same reasons cited in regard to factor (c)(i), the circuit court did not err in determining that respondent would not be able to provide proper care and custody within a reasonable time given the child's age. Accordingly, termination was supported under factor (g).

(j)

There also existed clear and convincing evidence that ZF faced a reasonable likelihood of harm if returned to respondent's care. ZF was 3-1/2 years old at the time of the termination hearing. His young age demands close parental supervision. Respondent exhibited an inability to provide such supervision in December 2013, when ZF was returned to her care.

Respondent has historically shown a lack of insight regarding the people she permitted around her children. In 2007, respondent permitted underage drinkers to revel at her house, and in 2012, she allowed a pedophile to spend the night in the same house as her children. Respondent then proposed exposing ZF to her new boyfriend who had not made any effort to verify his appropriateness to be around the child. Respondent's only permanency plan hinged on this man; without him, she could not afford a place to live.

Further, respondent's failure to consistently participate in counseling raised concerns that she has not gained the necessary insight to keep her child safe. Although respondent denied having a substance abuse problem, her failure to comply with drug screens left open the possibility that respondent may put her child at risk by using while trying to care for him.

Ultimately, respondent's exhibited lack of supervision over her children, exposure of her children to unsafe individuals, and failure to sufficiently participate in services to overcome these deficiencies supported termination under factor (j).

Best Interests

Moreover, a preponderance of the evidence supported the circuit court's conclusion that termination was in ZF's best interests. Although respondent and ZF loved each other, the child had nothing more than a superficial bond. ZF did not cry at the end of parenting time sessions and was excited to see his foster mother. The child never asked about his parents outside of parenting time.

There was evidence that respondent's parenting skills were less than adequate as well. At the emergency removal hearing in January 2014, the caseworker noted that a CPS worker came to the house and found ZF unsupervised while respondent and her boyfriend were in her bedroom. Respondent ultimately left ZF at her first ex-husband's house and did not return for three days. In the months between ZF's second removal and the termination hearing, respondent missed several parenting time sessions either because she was too late or did not appear at all.

ZF's need for permanency, stability, and finality also outweighed respondent's desire to reunify with her child. ZF was only 3-1/2 at the termination hearing. In the prior two years, ZF had been shuffled between the homes of his parents, aunt, grandparents, and foster mother. The child's psychologist opined that ZF was experiencing anxiety and showing some signs of an attachment disorder as a result of these moves. Respondent hoped to have housing within the next month but her financial plan was unreasonable. Accordingly, there was no prediction when ZF could find permanence with his mother.

And ZF's foster home offered many advantages. The foster mother expressed a desire to adopt the child. Although the foster mother did not want to have contact with the parents, she had worked well with the paternal grandparents and had promised to continue that relationship. ZF was already bonded with his foster mother, called her mom, and was excited to see her at the end of parenting time sessions. Under these circumstances, the evidence supported the circuit court's best interest determination.

We affirm.

/s/ Michael J. Talbot
/s/ William B. Murphy
/s/ Elizabeth L. Gleicher